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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,057	10/31/2003	Brian Joseph Dillenburg	PB 03 0006 (SPLG 3)	2573

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EXAMINER

YAARY, MICHAEL D

ART UNIT	PAPER NUMBER
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2193

MAIL DATE	DELIVERY MODE
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03/18/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/699,057	Applicant(s) DILLENBURG ET AL.	
	Examiner MICHAEL YAARY	Art Unit 2193	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-22 and 24-27.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Lewis A. Bullock, Jr./
 Supervisory Patent Examiner, Art Unit 2193

Continuation of 11. does NOT place the application in condition for allowance because: Examiner respectfully disagrees with the arguments provided by applicant. Applicant argues that A) no legitimate reason has been provided for modifying the primary reference Amberg in the suggested matter as applied to claims 1, 13, and 14 and that the combination is based on hindsight reconstruction; B) Proskauer fails to make up the deficiencies as applied to claims 2, 3, 8, and 9; and C) no reason exists to modify the teachings of Kittross and Proskauer based on Amberg as applied to claims 15-22, 24, and 25.

With respect to argument A, Examiner disagrees that there is no reason to combine and that the combination is based on hindsight reconstruction. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the references are in the same field of endeavor. Amberg discloses a build to order computer system in which software is distributed to the computer system in a distribution environment. Both Kittross and Mutchler are related to a distributing environment as well as both are directed distributing, configuring, and using files in devices in a testing environment. Although not solving the same problem, the three prior arts are indeed analogous to each other as they are each distributing information, and thus one of ordinary skill in the art at the time of the invention would be able to combine the references with motivation to do so. Motivation can be found in the previous office action dated 11/30/2007.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Furthermore, applicant argues the Amberg does not distribute software components automatically based on at least one of an identification of the test station and identification of the product. Examiner disagrees. The Amberg reference is relied upon to teach the distribution of software components. It is the teachings of Mutchler, not Amberg, that teaches distributing based on identification information. Thus, it is when taking in combination the teachings of Amberg, Kittross, and Mutchler that teach distributing software components automatically based on at least one of an identification of the test station and an identification of the product.

Applicant also argues that Kittross does not describe a method for distributing software components from a test management system that is located remotely from a computer station. Again, Kittross is not relied upon for this limitation. It is the teachings of Amberg that is relied upon, as recited in the previous office action.

With respect to argument B, Examiner respectfully disagrees. Proskauer discloses (column 5, lines 55-column 6, line 4) that each handler has its own driver thus having its own code to operate the specific handler. It can be understood that since the each handler has its own code and drivers that it will function independent of the product. Thus, the combination of Amberg, Kittross, Mutchler, and Proskauer disclose downloading an equipment file set being independent of the product.

Furthermore, applicant argues that Proskauer lacks a calibration file for calibration of an instrument. Examiner disagrees. Column 6, lines 24-33 disclose using a communication interface to control and program the handler appropriately to test the device. Although, the explicit wording of calibration file is not used, one of ordinary skill in the art would understand that when programing the instrument, a specific code file or instruction file would be used, thus being a file for calibration of the handler.

With respect to argument C, Examiner respectfully disagrees. Examiner has shown above in argument A, that the three prior arts of Kittross, Proskauer, and Amberg are analogous and thus able to be combined with motivation to do so.